

§ 774.9

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only needed to the extent that new or more detailed information available at the second-tier stage raises new Section 4(f) concerns not already considered.

(3) The final Section 4(f) approval may be made in the second-tier CE, EA, final EIS, ROD or FONSI.

(f) In accordance with §§ 771.105(a) and 771.133 of this chapter, the documentation supporting a Section 4(f) approval should be included in the EIS, EA, or for a project classified as a CE, in a separate document. If the Section 4(f) documentation cannot be included in the NEPA document, then it shall be presented in a separate document. The Section 4(f) documentation shall be developed by the applicant in cooperation with the Administration.

§ 774.9 Timing.

(a) The potential use of land from a Section 4(f) property shall be evaluated as early as practicable in the development of the action when alternatives to the proposed action are under study.

(b) Except as provided in paragraph (c) of this section, for actions processed with EISs the Administration will make the Section 4(f) approval either in the final EIS or in the ROD. Where the Section 4(f) approval is documented in the final EIS, the Administration will summarize the basis for its Section 4(f) approval in the ROD. Actions requiring the use of Section 4(f) property, and proposed to be processed with a FONSI or classified as a CE, shall not proceed until notification by the Administration of Section 4(f) approval.

(c) After the CE, FONSI, or ROD has been processed, a separate Section 4(f) approval will be required, except as provided in § 774.13, if:

(1) A proposed modification of the alignment or design would require the use of Section 4(f) property; or

(2) The Administration determines that Section 4(f) applies to the use of a property; or

(3) A proposed modification of the alignment, design, or measures to minimize harm (after the original Section 4(f) approval) would result in a substantial increase in the amount of Section 4(f) property used, a substantial increase in the adverse impacts to Section 4(f) property, or a substantial re-

duction in the measures to minimize harm.

(d) A separate Section 4(f) approval required under paragraph (c) of this section will not necessarily require the preparation of a new or supplemental NEPA document. If a new or supplemental NEPA document is also required under § 771.130 of this chapter, then it should include the documentation supporting the separate Section 4(f) approval. Where a separate Section 4(f) approval is required, any activity not directly affected by the separate Section 4(f) approval can proceed during the analysis, consistent with § 771.130(f) of this chapter.

(e) Section 4(f) may apply to archeological sites discovered during construction, as set forth in § 774.11(f). In such cases, the Section 4(f) process will be expedited and any required evaluation of feasible and prudent avoidance alternatives will take account of the level of investment already made. The review process, including the consultation with other agencies, will be shortened as appropriate.

§ 774.11 Applicability.

(a) The Administration will determine the applicability of Section 4(f) in accordance with this part.

(b) When another Federal agency is the Federal lead agency for the NEPA process, the Administration shall make any required Section 4(f) approvals unless the Federal lead agency is another U.S. DOT agency.

(c) Consideration under Section 4(f) is not required when the official(s) with jurisdiction over a park, recreation area, or wildlife and waterfowl refuge determine that the property, considered in its entirety, is not significant. In the absence of such a determination, the Section 4(f) property will be presumed to be significant. The Administration will review a determination that a park, recreation area, or wildlife and waterfowl refuge is not significant to assure its reasonableness.

(d) Where Federal lands or other public land holdings (e.g., State forests) are administered under statutes permitting management for multiple uses, and, in fact, are managed for multiple uses, Section 4(f) applies only to those portions of such lands which function